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FILED

DISTRICT COURT OF GUAM

SEP 28 2005

MARY L.M. MORAN
CLERK OF COURT

DISTRICT COURT OF GUAM
TERRITORY OF GUAM

FRANKIE T. CAMACHO,

Plaintiff,

vs.

GUAM TERRITORY, et. al.

Defendants.

Civil Case No. 05-00007

ORDER

Regarding Petitioner's:

Request to Proceed *In Forma Pauperis*,
Request to Amend Complaint, and
Request for Class Action Status

This matter comes before the Court on Plaintiff Frankie T. Camacho's ("Camacho") requests as follows: to proceed *in forma pauperis*, to amend his complaint and to grant class action status.

REQUEST TO PROCEED IN FORMA PAUPERIS

Camacho's application for permission to proceed *in forma pauperis* is CONDITIONALLY GRANTED pending review of Camacho's trust account information. A copy of this order, Camacho's Consent Form, Instructions for Filing Certificate of Funds and Prisoner's Trust Account Statements, and a Certificate of Funds Form shall be sent by the docket clerk to the prison trust account office where Camacho is presently incarcerated. A copy of this order shall also be sent to all parties involved in this action.

It is now the sole responsibility of the prison to file with the Court, within 30 days of the date of this order, all required information regarding Camacho's trust account for the six month period immediately preceding February 22, 2005, the date of the filing of Camacho's complaint

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1 in this Court. Failure of the prison to comply with the instructions of this Court will not
2 adversely affect Camacho's complaint but will delay its resolution.

3 After submission of the trust fund information, the Court will determine if Camacho has
4 sufficient funds to pay the filing fee in one payment or in numerous payments and the amount
5 of the initial and subsequent payments.

6 **REQUEST TO AMEND COMPLAINT**

7 Camacho filed a "Motion for Leave to File Supplemental/Amended Complaint" and an
8 "Amended Complaint" on May 24, 2005. Upon review of Camacho's pleading, it appears that
9 Camacho intends the Amended Complaint to supplement his original complaint filed on
10 February 22, 2005.

11 Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, the Court may grant leave
12 to amend "freely" "when justice so requires." Factors guiding a court's determination of whether
13 to grant a motion to amend are: (1) undue delay; (2) bad faith; (3) futility of amendment; and (4)
14 prejudice to the defendants. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1482 (9th Cir. 1997).
15 Camacho has not exhibited undue delay or bad faith. Further amendment may not be futile, nor
16 would it prejudice the opposing parties, who have not all been served.

17 Accordingly, Camacho's Motion for Leave to Amend is GRANTED. The Amended
18 Complaint is dismissed with leave to amend. Camacho shall submit a Second Amended
19 Complaint within 30 days of the date this Order is filed. The Second Amended Complaint must
20 be retyped or rewritten in its entirety and may not incorporate any part of the original Complaint
21 or Amended Complaint by reference. Any Second Amended Complaint submitted by Plaintiff
22 should be clearly designated as such on the face of the document. Camacho should take notice
23 that all causes of action alleged in a complaint which are not alleged in an amended complaint
24 are waived. *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990).¹

25 The Clerk of Court is directed to enter a judgment of dismissal without prejudice and
26 without further notice to Camacho, if Camacho fails to file a Second Amended Complaint within
27 30 days from the date this Order is entered.

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¹ The Court notes that any newly named defendants should be included in the caption as well as in the body of the complaint.

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